



Legal Opinions
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Q. Someone has called the town asking for a fireworks permit. Why do they need a permit from the town?

A. Under state law, fireworks may generally only be sold to members of the public for recreational use if they are the holder of a valid user's permit meeting the requirements of s. 167.10(3), Wis. Stat. As a result, people wishing to use or possess fireworks within the town must get a permit from the town. Permits are not required to transport fireworks through the town on the way to another location, as long as the person transporting the fireworks remains in the town for less than 12 hours. See s. 167.10(3)(bm), Wis. Stat. Likewise, people who are not state residents can buy fireworks without a permit and transport them out of state as long as they don't stay in any municipality for more than 12 hours. If they intend to use the fireworks in Wisconsin or plan to stay in any Wisconsin municipality with the fireworks for 12 or more hours, they need a valid permit.

Q. Who may issue a town fireworks permit?

A. Pursuant to s. 167.10(3), no person may possess or use fireworks without a user's permit issued by the chairperson of the town in which the possession or use is to occur. The chair may delegate the authority to issue fireworks permits to another person, such as a town employee, if desired. Town board action is not required to issue the permit. However, the WTA believes that it is not appropriate for the town chair to delegate the authority to issue fireworks user permits to dealers. Obviously, the dealer's interest is in making the sale and one would not expect him or her to be particularly vigilant in determining who should or should not be given a permit.

Q. What should the chair consider when deciding whether to issue a user permit?

A. Factors the chair should consider include desired time of use, drought conditions, and population/building density in the location where the fireworks are to be used. If the density is high, the chair might require proof of neighbor consent before the permit will be issued. The chair may refuse to issue a permit if the risk of fire is high, the applicant fails to file a requested bond, the population density in the location is too high, neighbors do not consent, etc.

Keep in mind that the permit issuer has the discretion to require a bond or insurance as a condition of issuing the permit. The level of protection needed may vary depending on whether a group of neighbors or a more sophisticated entity is making the request. See s. 167.10(3)(e).

Q. What items are considered "fireworks"?

A. The state statute defines what items constitute "fireworks" and what items do not. See s. 167.10(1), Wis. Stat. Certain items, such as sparklers and cone fountains, have been specifically excluded from the state definition. If an item has been excluded from the definition, no permit is

required unless the town has a local ordinance requiring a permit for the item. See s. 167.10(5)(a)1, Wis. Stat. A commonly used rule of thumb is that a permit is required under state law if the device explodes or leaves the ground.

Q. Who is eligible for a fireworks permit?

A. Any individual or group of individuals, public authorities, fair associations, amusement parks, park boards, civic organizations, and farmers who use the fireworks against predatory birds or animals may request a permit. See s. 167.10(3)(c). However, permits may *not* be issued to minors. See s. 167.10(3)(h).

Q. What information must the user permit contain?

A. The permit must contain the permit holder's name and address, the date on and after fireworks may be purchased, the general kind and approximate quantity of fireworks that may be purchased, the date and location of permitted use and any other special conditions prescribed by ordinance. A sample permit is located in the Town Law Forms book. The Town Law Forms are available online. You can link to them through our website or go to <http://www.legis.state.wi.us/rsb/townlaw.htm> After clicking on the list of forms, scroll down to 167.10 to find the sample fireworks permit.

Q. Should a fireworks user permit be issued to someone that wants to sell fireworks from a stand?

A. Dealers with a federal license are exempt from needing an additional permit from the town in order to sell fireworks. See City of Wisconsin Dells v. Dells Fireworks Inc., 197 Wis.2d 1, 19, 539 N.W.2d 916 (Ct. App. 1995). So, while the dealer does not need a permit from the town to engage in sales, the dealer is required to ensure that he or she is only selling fireworks to someone that has been issued a valid user's permit or is exempt from needing such a permit.

Q. Can a town board require dealers to get a permit from the town in order to sell fireworks within the town?

A. Towns have the authority to adopt *local ordinances regulating the sale, possession or use of fireworks*, so this would be an option. However, if there is no town ordinance requiring a permit, sellers do not have to get a permit from the town in order to sell their product. Keep in mind that dealers do have to comply with any zoning ordinances or other laws that restrict where commercial businesses can be located within the town.

Q. Who gets a copy of the user permit?

A. A copy of the permit must be given to municipal fire and/or law enforcement officials at least two days before the date of the authorized use. See s. 167.10(g). A municipality putting on its own fireworks display is not required to have a permit. However, the two-day notice requirement must still be followed, s. 167.10(3)(b)1.

Can a town be held liable for issuing a fireworks permit?

A. Section 167.10(7m), Wis. Stat., creates a civil liability exemption for municipalities (and their agents) who issue fireworks permits. This means that a town should not be held liable for damage to people or property caused by fireworks simply because the town issued a fireworks permit. However, town chairs (and their designees) must still use common sense when issuing permits and permits should not be issued when drought conditions are present or other unusual safety concerns exist.

Q. If the town is concerned that a local stand is selling fireworks to state residents who have not obtained a user permit, what can be done?

A. The town may file a lawsuit against the seller and seek an injunction and forfeitures. See s. 167.10(8), Wis. Stat. In addition, a town board has the authority to adopt an ordinance to **prohibit** the sale, use or possession of fireworks within the town. See s. 167.10(5), Wis. Stat. Hopefully, such an extreme measure can be avoided if dealers are made aware of the law and purchasers obtain the necessary permits.